

ADAMS, J.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

OMNI TURNPIKE, LLC,)	CASE NO. 5:05CV1711
)	
Plaintiff,)	
)	JUDGE JOHN R. ADAMS
v.)	
)	<u>MEMORANDUM OF OPINION</u>
SHEETZ, INC.,)	<u>AND ORDER</u>
)	[RESOLVING DOCS. 21 and 23]
Defendant.)	

This breach of contract action is before the Court upon the Report and Recommendation (Doc. 28) of a magistrate judge of this Court.

On August 21, 2007, the above-entitled action was referred to Magistrate Judge Patricia A. Hemann pursuant to 28 U.S.C. § 636 and Local Rules 72.1 and 72.2(a) for a report containing proposed findings and a recommendation for disposition of the following motions:

Plaintiff's Motion for Summary Judgment as to Liability Only (Doc. 21); and

Defendant's Motion for Summary Judgment (Doc. 23).

The Court has reviewed *de novo* the Report and Recommendation, filed on September 7, 2007. The Court has considered plaintiff's Objections (Doc. 30) and defendant's Objections¹ and Reply to Plaintiff's Objections (Doc. 31). The Court finds that the report and recommendation is well-supported and that the plaintiff's objections are without merit. The Court agrees with the conclusion of the magistrate judge that defendant's Motion for Summary

¹Defendant "objects" that there are two additional grounds for granting its motion for summary judgment that were not relied upon by the magistrate judge. The Court declines to decide the merits of these defenses.

Judgment should be granted and plaintiff's Motion for Summary Judgment as to Liability Only should be denied because the plaintiff failed to perform its own contractual obligations under Section 2.2(c) of the Lease Agreement. The Court adopts the findings of fact and conclusions of law of the magistrate judge as its own. Therefore, the Report and Recommendation is hereby ADOPTED and the plaintiff's objections are OVERRULED. Accordingly,

Defendant's Motion for Summary Judgment (Doc. 23) is GRANTED upon the grounds that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law.

Plaintiff's Motion for Summary Judgment as to Liability Only (Doc. 21) is DENIED. Final judgment will be entered in favor of defendant on the complaint.

IT IS SO ORDERED.

September 28, 2007
Date

/s/ John R. Adams
John R. Adams
U.S. District Judge